

## § 223.44

between remaining current contract value and the total of:

- (1) Remaining base rate value needs,
- (2) Salvage sale fund needs plus sale area improvement needs in excess of base rate value needs, and
- (3) Total purchaser credit limit on the given sale.

(b) This calculation shall be made as of the date of sale award for sales made on or after January 1, 1978. For sales made prior to January 1, 1978, the calculation shall be made as of December 31, 1977, except that if the amount actually transferred in as of December 31, 1977, exceeds the calculated limit, the actual transfers as of that date shall be the established limit. Purchaser credit earned on a sale and subsequently transferred out may be replaced without regard to the transfer in limit. Sale area improvement needs shall be based on the original sale area betterment plan or revisions thereto approved prior to July 1, 1976. Salvage sale fund needs shall be based on the original salvage sale fund plan.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535))

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.44 Collection rights on contracts involved in transfer of purchaser credit.

To assure protection of the United States in connection with the implementation of this regulation, contract provisions shall not prevent the Forest Service from carrying out collection rights, authorized by the Federal Claims Collection Act of 1966 (80 Stat. 309), between contracts involved in the transfer of purchaser credit. Such claims against the contract receiving the transferred purchaser credit shall be limited to the amount transferred.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535))

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.45 Definitions applicable to transfer of purchaser credit.

As used in §§ 223.42 and 223.43, the term *Purchaser* includes any single individual, corporation, company, firm, partnership, joint venture, or other business entity or the successor in interest of any of the foregoing business

## 36 CFR Ch. II (7-1-03 Edition)

entities having timber sale contracts on the same National Forest. The term *National Forest* shall be considered as a unit of the National Forest System, regardless of how it was established, which maintains a separate identity with respect to the distribution of receipts earned thereon to the States and counties. The term *Effective Purchaser Credit* means unused purchaser credit which does not exceed current contract value minus base rate value. The term *base rate value* is the sum of the products of base rates and estimated remaining unscaled (unreported on tree measurement contracts) volumes by species of timber included in a timber sale contract.

(Pub. L. 94-154, 89 Stat. 823 (16 U.S.C. 535))

[42 FR 63777, Dec. 20, 1977. Redesignated at 49 FR 2761, Jan. 23, 1984]

### § 223.46 Adjustment of contract termination date.

Timber sale contracts may provide for adjustment of the termination date to provide additional time to compensate for delays in road construction and timber removal due to those causes beyond the purchaser's control, which may include but are not limited to acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections or floods.

### § 223.47 Date of completion of permanent road construction.

(a) The date of completion of permanent road construction obligations as set forth in the Notice of Sale shall be incorporated into the timber sale contract.

(b) This date is applicable to construction by both the Forest Service and the timber purchaser.

(c) The date is not applicable to roads not needed by the purchaser for timber removal.

(d) The date for completion may be revised, if additional time is needed, under guidelines provided by the Chief, Forest Service, including but not limited to (1) default of contractors or (2) design changes, physical changes, or catastrophic damages which necessitate modification of specified road construction work.

## Forest Service, USDA

## § 223.49

(e) If Forest Service failure to perform results in delay in road completion, the termination date shall be adjusted in accordance with the contract term adjustment provisions of the timber sale contract. If there is substantial delay in performance by the Forest Service, the contract shall provide that rates of payment may be redetermined, at the request of the purchaser, in accordance with guidelines established by the Chief, Forest Service.

(f) If the purchaser retains responsibility for road construction, the date of completion for permanent roads may be modified to conform to the approved plan of operation.

### § 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at subpart D of this part in effect prior to that date. Such contracts shall also require purchasers to:

(1) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale including a description of unprocessed timber which is sold, exchanged or otherwise disposed of to another person and a description of the relationship with the other person;

(2) Submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands in the tributary area which is exported or sold for export; and

(3) Maintain records of all such transactions involving unprocessed timber and to make such records available for inspection and verification by the Forest Service for up to three (3) years after the sale is terminated.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Re-

sources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*).

(c) The reporting and recordkeeping procedures in this section constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596-0021.

[56 FR 65842, Dec. 19, 1991]

### § 223.49 Downpayment.

(a) For the purposes of this section, the terms listed in this paragraph shall have the following meaning:

(1) *Total bid value* is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume listed in the contract.

(2) *Ineffective purchaser credit* is that portion of the credit earned, pursuant to a specific Forest Service timber sale contract for construction of specified roads, or for other purposes in such contract, that exceeds the current contract value, minus base rate value as defined in that contract and, thus, is an amount that cannot be applied toward stumpage charges.

(3) *Bid premium* is the amount in excess of the advertised value that a purchaser bids for timber offered.

(4) *Lump sum timber sales* are premeasured sales where the entire value of the sale is paid in one payment at time of release for cutting.

(5) *Affiliate*. Concerns or individuals are affiliates if directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

(b) Timber sale contracts shall include provisions that require purchasers to make a downpayment in cash or by application of earned effective purchaser credit at the time a timber sale contract is executed.

(c) The minimum downpayment shall be equivalent to 10 percent of the total advertised value of each sale, plus 20 percent of the bid premium, except in those geographic areas where the Chief